

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
GELEAN MARK,)
VERNON FAGAN, aka "Culture,")
ALLEN DINZEY, aka "Mow,")
DAVE BLYDEN, aka "Kimbi,")
KEITH FRANCOIS, aka "Kibo,")
ALEXCI EMMANUEL,)
ROYD THOMPSON, aka "Killer,")
ANDREW WILLIAMS, aka "Buddah,")
TYRONE ALEXANDER PRINCE,)
LEON BOODOO, and)
WAYNE SERIEUX, aka "Bruce," aka)
"Soldier.")
)
Defendants.)
_____)

Criminal No. 2005-76

ATTORNEYS:

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St. Thomas, U.S.V.I.
For the Plaintiff,

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St. Croix, U.S.V.I.
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For the defendant Vernon Fagan,

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For the defendant Dave Blyden,

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For the defendant Alexci Emmanuel,

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For the defendant Royd Thompson,

George H. Hodge, Jr., Esq.

St. Thomas, U.S.V.I.

For the defendant Tyrone Alexander Prince,

Clive C. Rivers, Esq.

St. Thomas, U.S.V.I.

For the defendant Leon Boodoo.

ORDER

GÓMEZ, C.J.

The trial in the above-captioned matter took place between March 5, 2007, through March 27, 2007. The parties rested and the matter went to the jury during the third week of trial. After approximately two days of deliberation, the jury sent the Court a note indicating they were deadlocked and could not reach a unanimous verdict with respect to Counts One, Six, and Eighteen of the Second Superseding Indictment (the "Indictment"). After consulting with counsel, the Court instructed the jury to deliberate further (the "Allen charge"), consistent with *Government of the Virgin Islands v. Gereau*, 502 F.2d 914, 935-36 (3d Cir. 1974).

After approximately one more day of deliberations, the jury sent another note to the Court indicating that they were still unable to reach a unanimous verdict on Counts One, Six, and Eighteen.

Generally, "[m]anifest necessity' must be present ... for a trial judge to declare a mistrial and still preserve for the state the right to re prosecute a defendant." *United States ex rel. Russo v. Superior Court of New Jersey*, 483 F.2d 7, 13 (3d Cir. 1973). Manifest necessity is present when the circumstances leave the trial judge with "no alternative to the declaration of a mistrial. The trial judge must consider and exhaust all other possibilities." *Love v. Morton*, 112 F.3d 131, 137 (3d Cir. 1997) (citing *United States v. McKoy*, 591 F.2d 218, 222 (3d Cir. 1979)).

Here, the jurors deliberated for quite some time. After receiving the *Allen* charge, the jurors were still unable to come to a unanimous decision. The Court finds that manifest necessity requires the declaration of a mistrial in this matter.

The premises considered, it is hereby

ORDERED that a mistrial is declared; it is further

ORDERED that a new trial date will be set for the trial of Counts One, Six, and Eighteen of the Indictment.

Dated: March 27, 2007

/s/
CURTIS V. GÓMEZ
Chief Judge

ATTEST:
WILFREDO F. MORALES
Clerk of the Court

By: _____ /s/
Deputy Clerk

Copy: Hon. Geoffrey W. Barnard
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